89- 1422

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

RON ROST,

Petitioner

VERSUS

ROBERT TISCH, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Respondent

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RONALD D. ROST
Pro Se
765 Remington
Las Vegas, NV 89110
(702) 452-3290

QUESTIONS FOR REVIEW

1. Can a waiver be legal under the Fourteenth Amendment to the Constitution, when the record does not show that it was an intelligent decision, or if I knew of the likely consequences?

2. Under the meaning of Title VII of the Civil Rights Act of 1964, can a person be promoted into a job, not trained, then terminated for insufficient improvement. Especially when all the other employees were trained.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OPINIONS BELOW

The Ninth Circuit Court of Appeals denied my petition for rehearing (Appendix A). The Ninth Circuit also earlier had issued a Memorandum on the case (Appendix B). The District Court's Findings of Fact and Conclusions of Law can be found on Appendix C, with the Equal Employment Opportunity's Decision on Appendix D.

JURISDICTION OF THIS COURT

The jurisdiction of this Honorable Court is invoked by the fact that this Writ is being filed in a timely fashion from the denial of the Ninth Circuit Court to have a rehearing on December 15, 1989.

CONSTITUTIONAL PROVISIONS AND CIVIL RIGHTS

1. Due process of law was denied to me under the Fourteenth Amendment to the Constitution.

2. I was also discriminated against under the meaning of Title VII of the Civil Rights Act of 1964.

STATEMENT OF CASE

On February 25, 1980 I was hired as a casual employee, to drive a truck. I was then promoted on April 25, 1980 to a letter carrier. Even though I had passed a physical done by their doctors, the Postal Service's District Doctor, who had never seen me, sent word to have me terminated for not being physically fit to carry mail. So I was fired for the same reason I was hired, being a disabled veteran. I turned in a claim with Equal Employment Opportunity as well as the Postal Service. The Postal Service had me take another physical, and I passed, so I was brought back to work, but was told that I would have to start another 90 day probation period, with no back pay for the month of work that I missed. So, because it was an

unjustified termination, I kept my Equal Employment Opportunity claim in effect. On October 17, 1980 I was terminated again, for insufficient improvement. I filed another Equal Employment Opportunity claim. On December 15, 1981 the Equal Employment Opportunity held a hearing on the first termination, and found that I was discriminated against, because of my physical handicap, and the Postal Service had to pay me for the month of work that I lost because of the unjustified termination. That made me whole, a career employee, my first 90 day probation complete. So when I was terminated the second time, as a probationary employee, instead of realizing the injustice done to me, and bringing me back, the Postal Service sent me a new termination letter on June 1, 1982 that said that my second termination of October 17, 1980 as a probationary employee was rescinded, but nonetheless that I was still terminated, with this letter effective

one and a half years back. I filed another Equal Employment Opportunity claim, which is the case at hand.

It was during the administrative hearing of this case that I allegedly gave up my physical handicap claim.

Also it was proven in District Court that through both probationary periods, I was never trained as a letter carrier, and that all the other letter carriers were trained.

FEDERAL JURISDICTION

The Jurisdiction of the District Court comes under TItle VII of the Civil Rights Act of 1964, 42 U.S.C., subsection 200 e-5 (f) through (k) and 2000 e (16), Title 29 S 791 et seq.

ARGUMENT

1. The decision of the Ninth Circuit Court on this case is in an apparent conflict of not only its own case law, but also conflicts with

decisions from the Supreme Court of the United States.

I am a lay-person when it comes to the law and court proceedings. I may have stood quietly by while giving up my handicap claim, but that was because I got confused and didn't understand what was going on, or what the hearing officer wanted to hear.

The record shows (Appendix E) that the hearing officer did not make sure that this was really what I wanted to do or if I knew what the likely consequences were. Therefore, it was not an intelligent decision, especially when I only said I think that I wanted to give it up.

In Pfeifer vs. U.S. Bureau of Prisons, 615 F.2d 873. It was found in 1980 by the Ninth Circuit Court of Appeals that "valid waiver of Constitutional rights must be voluntarily and knowingly made", and also that it must appear on the record that it was in fact an intelligent decision. In the case at

hand it shows that it wasn't on record, that my decision wasn't a definite or intelligent decision at all. I thought that the hearing officer knew that my case had been proved as far as the physical handicap. I thought the hearing officer wanted to have me proceed on the other part of the case which would be the reprisal or training. I thought this because the hearing officer said, "stick to the facts."

In Brady vs. United States 90 S. CT., 1463, where it is proved, "waivers of Constitutional rights not only must be voluntarily but must be knowingly, intelligent acts done with sufficient awareness of relevant circumstances and likely consequences."

In Fuentes vs. Shevin, 92 S. CT., 1983. This case proves to us "In civil no less than criminal area courts indulge every reasonable presumption against waiver of procedural due process rights." It shows us that due process

of law was denied to myself under the Fourteenth Amendment to the Constitution. Inasmuch as I did not knowingly or intelligently waiver my rights of the physical handicap part of my complaint.

In Brookhart vs. Janic, 86 S. CT. 1245, it is proved to us in this case "There is presumption against waiver of Constitutional rights, and for waiver to be effective it must be clearly established that there was intentional relinquishment or abandonment of known right or privilege."

In United States vs. Fong, 529 F.2d 55. "Whether defendant understood his rights, and whether he knowingly and voluntarily waived them, is in the first instance a question of fact to be determined from all the circumstances." Further it is proved, "Competent and intelligent waiver is the same regardless of which Constitutional right is being waived."

2. Also, the decision made by the Ninth Circuit Court in the case at hand is against my Civil Rights.

Under the meaning of Title VII of the Civil Rights Act of 1964, it shall be an unlawful employment practice for any employer controlling apprenticeship, or other training or retraining, including on-the-job training programs to discriminate against an individual. Under Title VII it is also found that an employer may be held liable, whatever his intent.

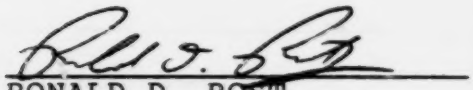
It was proved (Appendix G) that the Postal Service failed to train me after they promoted me into the job as a letter carrier, like they were supposed to.

They then terminated me for insufficient improvement. They trained the other letter carriers (Appendix F). Thus, they discriminated against me, taking away my Civil Rights.

CONCLUSION

I pray that this Honorable Court will grant a Writ of Certiorari, to review the decision of the United States Court of Appeals for the Ninth Circuit, for the reasons stated above, so that the wrong doing that has been done, can be made right, so that I may continue in the occupation that I chose, have my seniority, back benefits, court costs, attorney fees, and back pay returned to me, with fair interest.

Respectfully submitted,



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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO. 88-1943

D.C. NO. CV 83-541-LDG

ORDER

RON ROST,

Plaintiff-Appellant,

VERSUS

ROBERT TISCH, etc., et al.,

Defendants-Appellees.

(December 15, 1989)

Before: WIGGINS and KOZINSKI, Circuit Judges, and QUACKENBUSH*, District Judge

The panel has voted to deny the petition for rehearing and Judges Wiggins and Kozinski

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* Hon. Justin L. Quackenbush, United States District Judge for the Eastern District of Washington, sitting by designation.

have voted to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NO. 88-1943

D.C NO. CV 83-541-LDG

MEMORANDUM*

RON ROST,

Plaintiff-Appellant,

VERSUS

ROBERT TISCH, etc., et al.,

Defendants-Appellees,

Appeal from the United States District Court
for the District of Nevada
Lloyd D. George, District Judge, Presiding

Submitted August 14, 1989**
San Francisco, California

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel finds this case appropriate for submission without argument pursuant to Fed. R. App. P. 34(a) and 9th Cir. R. 34-4.

(August 29, 1989)

Before: WIGGINS and KOZINSKI, Circuit Judges, and QUACKENBUSH***, District Judge

Ron Rost, proceeding pro se, timely appeals the findings of fact and conclusions of law of the district court after trial on his claims that defendants had violated federal law by impermissibly terminating him from postal employment as an act of physical handicap discrimination and as an act of reprisal for having filed previous equal opportunity administrative complaints. The District Court found that Mr. Rost's termination was not in retaliation for having filed an EEOC complaint and that he had failed to exhaust his administrative remedies with respect to his handicap discrimination claim. Despite finding that the district court lacked subject matter jurisdiction due to the failure to exhaust, the court found that Mr. Rost

*** Hon. Justin L. Quackenbush, United States District Judge for the Eastern District of Washington, sitting by designation.

nevertheless was discharged for legitimate nondiscriminatory reasons. Mr. Rost argues that these findings were erroneous. We have jurisdiction, 28 U.S.C. § 1291 (1982), and we affirm.

We review the District Court's findings of fact under a clearly erroneous standard. World Airways Inc. v. International Brotherhood of Teamsters, 578 F.2d 800, 802 (9th Cir. 1978). Based on the record before us, the finding that there were sufficient legitimate, nonretaliatory reasons for plaintiff's discharge was not clearly erroneous. Accordingly, that finding will not be disturbed.

Whether the district court lacked jurisdiction is reviewed de novo. Misch v. Zee Enterprises, ____ F.2d ____, 1989 WL 713188 (9th Cir); Rosenfield v. United States, 859 F.2d 717, 725 (9th Cir. 1988). A district court lacks subject matter jurisdiction over a civil rights claim which a plaintiff fails to

raise before the Equal Employment Opportunity Commission (EEOC) unless the claim is "reasonably related to the allegations of the EEOC charge." Stache v. International Union of Bricklayers, 852 F.2d 1231 (1988), petition for cert. filed May 25, 1989; Shah v. Mt. Zion Hospital & Medical Ctr., 642 F.2d 268, 271 (9th Cir. 1981). Any investigation of whether Mr. Rost was discharged in retaliation for filing EEOC discrimination complaints would not have encompassed his subsequent claim that he was subjected to intentional handicap discrimination. The permissible scope of the civil action should be "limited to the scope of the EEOC investigation which can reasonably be expected to grow out of the charge" before the EEOC. Brown v. Puget Sound Elec. App. & Train. Trust, 732 F.2d 726, 730, (9th Cir.), cert. denied, 469 U.S. 1108 (1984).

The record supports the District Court's decision on this issue. Mr. Rost clearly indicated at the EEOC hearing that he was

proceeding on only his claim of retaliatory discharge. He withdrew his claim of handicap discrimination. Mr. Rost stood quietly by while the Postal Service advocate verified with the administrative judge that only the issue of reprisal was to be determined. The administrative judge issued a recommended decision limited to the reprisal issue and the Postal Service issued a final decision limited to that issue. Mr. Rost's failure to exhaust his administrative remedies before the EEOC precluded the presentation of his discriminatory treatment claim in federal court. Therefore, the court below could have properly dismissed Mr. Rost's claims of handicap discrimination. Nevertheless, the District Court carefully made factual findings as to the discrimination claims. Those findings are not clearly erroneous and, therefore, must stand.

AFFIRMED

APPENDIX C

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Assistant United States Attorney
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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CV-S-83-541-LDG

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

RON ROST,

Plaintiff,

VERSUS

ROBERT TISCH, POSTMASTER GENERAL,

Defendants.

(February 26, 1988)

This matter came on for trial before the Court sitting without a jury on January 19, 1988. The plaintiff was represented by Francis Morton, Esq. of Las Vegas, Nevada. Defendant was represented by Carlos A.

Gonzalez-Martinez, Assistant United States Attorney, and Arline S. Tyler, Esq., U.S. Postal Service. From the testimony and evidence submitted by the parties during the trial on January 19 and 20, 1988, the Court now makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

This is an action in which the plaintiff claims that he was discriminated against because of his alleged physical handicap in that he was discharged from the agency on October 17, 1980 and, subsequently, issued a supplemental notice of removal, affording him appeal rights under the collective bargaining agreement between plaintiff's former union and the agency. Jurisdiction is claimed pursuant to 42 U.S.C. §§ 2000e-16 and 2000e-5(f) through (k).

1. Plaintiff was first employed by the United States Postal Service on February 25, 1980 as a casual employee. In April of 1980

Plaintiff received a career appointment with a probationary period of ninety days. At this time Plaintiff's pre-employment physical examination found him physically fit for the job. However, because this examination indicated a service-connected back injury, the matter was sent to the District Medical Officer for evaluation. After his evaluation was completed with additional medical records received from the Veterans Administration, the District Medical Officer concluded that Plaintiff did not pass the required medical examination. Based upon this conclusion of the District Medical Officer, Plaintiff was terminated from employment on May 31, 1980, although Plaintiff had been satisfactorily performing the job tasks assigned to him through that date.

2. On June 2, 1980 the Plaintiff filed a complaint with the EEO, alleging discrimination based upon his physical handicap. While that complaint was pending,

Plaintiff's medical status was reviewed again in early July of 1980, at which time it was determined Plaintiff was medically suitable for employment after all. Therefore, Plaintiff was reinstated on July 28, 1980 as a probationary employee in accordance with the National Collective Bargaining Agreement.

3. On October 17, 1980, Plaintiff was terminated a second time. The reason given for this second termination was that Plaintiff was not performing satisfactorily as a probationary employee. Then, subsequent to the second termination, a hearing was held in 1981 on Plaintiff's complaint lodged with the EEO June 2, 1980 regarding the first time Plaintiff was terminated by Defendants.

4. Pursuant to the examiner's opinion, it was found that Plaintiff was discriminated against on the basis of his physical handicap. This decision was adopted by the agency on February 24, 1982. It was therefore ordered that Plaintiff's probationary period be

recomputed to take into account all the time Plaintiff spent on the job since receiving his career appointment on April 5, 1980, and it was ordered that Plaintiff be given back pay from May 31, 1980 to July 28, 1980. Thereafter, the Postal Service decided to rescind the "Notice of Removal" dated October 15, 1980 and issue an "Amended Notice of Removal" which was dated June 1, 1982 in order to afford Plaintiff access to grievance procedure afforded only to non-probationary employees. The "Amended Notice of Removal" stated the reason for termination as unsatisfactory progress.

5. Plaintiff appealed the "Amended Notice of Removal" but did not prevail on that appeal. Therefore, on August 3, 1983, Plaintiff filed the present action.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this action pursuant to Title 42 S 2000e-16, including the remedial provisions of Title VII

found at 42 U.S.C. § 2000e-5(f) through (k).

2. This Court has no jurisdiction over this action pursuant to Title 29 § 791 et seq as plaintiff withdrew the allegation of handicap discrimination in earlier administrative proceedings.

3. This Court lacks jurisdiction over plaintiff's complaint concerning EEO case number 5-1-0118-1 (re reprisal, arising out of plaintiff's discharge from the agency on October 17, 1980), as it has no subject matter jurisdiction over that matter. Cooper v. Bell, 628 F.2d 1208 (9th Cir. 1980); Cooper v. U.S. Postal Service, 740 F.2d 714 (9th Cir. 1984), cert. denied, 471 U.S. 1022 (1985).

4. The only issues over which this Court may exercise jurisdiction are those raised in plaintiff's complaint concerning EEO case number 5-1-0119-3 (re reprisal, arising out of the supplemental notice of removal dated June 1, 1982).

5. The Court finds there was no reprisal

when the agency issued its supplemental notice of removal on June 1, 1982.

6. Although the issue of plaintiff's performance was not an issue properly before this Court, after hearing all the evidence, the Court finds that the agency had legitimate, non-discriminatory reasons for discharging the plaintiff in October, 1980.

DATED this _____day of _____, 1988.

_____
UNITED STATES DISTRICT JUDGE

Submitted by:

WILLIAM A. MADDOX
United States Attorney

CARLOS A. GONZALEZ-MARTINEZ
Assistant United States Attorney

Of Counsel:

Arline S. Tyler
Attorney
Office of Labor Law
U.S. Postal Service
850 Cherry Avenue, Room 819
San Bruno, Ca. 94099-0170

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CV-S-83-541-LDG

JUDGMENT

RON ROST,

Plaintiff,

VERSUS

ROBERT TISCH, POSTMASTER GENERAL
and UNITED SERVICE POSTAL SERVICE,

Defendants.

(February 26, 1988)

This action came on for hearing before this Honorable Court and the issues having been duly heard and a decision having been duly rendered,

IT IS HEREBY ORDERED that Plaintiff's Complaint against the Defendants shall be and is hereby dismissed.

DATED this _____ day of _____, 1988.

_____
UNITED STATES DISTRICT JUDGE

Submitted by:

WILLIAM A. MADDOX
United States Attorney

CARLOS A. GONZALEZ
Assistant United States Attorney

APPENDIX D

STATEMENT OF FINDINGS AND RECOMMENDED

DECISION IN THE DISCRIMINATION COMPLAINT

OF RONALD D. ROST

EEOC COMPLAINT NO. 092-83-X0214

(June 30, 1983)

COMPLAINANT:

Ronald D. Rost
765 Remington
Las Vegas, NV 89110

COMPLAINANT'S REPRESENTATIVE:

Dave Carlson, Union Pres.
U.S. Postal Service
Las Vegas, NV 89114

AGENCY:

U.S Postal Service

AGENCY'S REPRESENTATIVE:

Bette Chamberlain

ATTORNEY EXAMINER:

Edward B. Reitkopp
Equal Employment Opportunity
Commission
3255 Wilshire Blvd.,
9th Floor
Los Angeles, CA 90010

COMPLAINT:

Discrimination based upon
reprisal

DATE OF HEARING:

May 26, 1983

GLOSSARY OF ABBREVIATIONS

AE	-	AGENCY'S EXHIBIT
CE	-	COMPLAINANT'S EXHIBIT
EE	-	EXAMINER'S EXHIBIT
IR	-	INVESTIGATOR'S REPORT
IE	-	INVESTIGATOR'S EXHIBIT
HT	-	HEARING TRANSCRIPT
PHS	-	POST HEARING SUBMISSION

I. INTRODUCTION

The complainant alleged that he was the victim of reprisal when, on June 1, 1982, he received a Supplement to his original Termination Letter dated October 15, 1980 removing him from the position of Letter Carrier at the Las Vegas Postal Service. Prior to the hearing, the complainant withdrew his allegation of complaint concerning his October 16, 1980 termination. This complaint was withdrawn. A letter from the complainant's attorney, explains the reasons for the withdrawal. (E.E.1). The agency objected to this Examiner making any findings on the withdrawn complaint. This Examiner allowed both parties to present evidence on the original termination. This Examiner concludes, however, after hearing all the evidence, that there is no jurisdiction to make a determination regarding the issue of the 1980 termination as the only issue accepted by the agency for investigation was

the 1982 Supplemental letter.

II. BACKGROUND OF ADMINISTRATIVE PROCEDURES

The following is a chronology of the events which led to a hearing of the complaint:

A. The complainant filed a formal complaint of discrimination on October 7, 1982.

B. The agency's proposed disposition was issued on December 15, 1982.

C. The complainant requested a hearing of the complaint on January 3, 1983.

D. The agency requested the assignment of an Examiner to conduct a hearing of the complaint on January 4, 1983.

III. ISSUE

The issue is whether or not the complainant was a victim of reprisal.

IV. ANALYSIS AND FINDINGS

A. LEGAL STANDARD FOR REVIEW

In granting certiorari in the landmark case of McDonnell Douglas Corporation v. Green, 411 U.S. 792, 797 (1973), the United States Supreme Court sought "to clarify the standards governing the disposition of an action challenging employment discrimination" in the single plaintiff context. The Court set forth the following order and allocation of proof:

> The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination...
>
> The burden then must shift to the employer to articulate some legitimate nondiscriminatory reason for the employee's reaction...
>
> The complainant must...be afforded a fair opportunity to show that the employer's stated reason for complainant's rejection was in fact pretextual...and to demonstrate by competent evidence that the presumptively valid reasons for his rejection were in fact a cover up for a racially discriminatory decision.

The Court in Furnco v. Waters, 438 U.S. 567 (1978) explained the nature of the McDonnell Douglas prima facie case:

> A prima facie case under McDonnell Douglas raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors...
>
> discriminated against the employee. If the trier of fact believes the plaintiff's evidence, and if the employer is silent in the face of the presumption, the court must enter judgment for the plaintiff because no issue of fact remains in the case.
>
> The burden that shifts to the defendant, therefore, is to rebut the presumption of discrimination by producing evidence that the plaintiff was rejected, or someone else was preferred, for a legitimate, nondiscriminatory reason....To accomplish this, the defendant must clearly set forth, through the introduction of admissible evidence, the reasons for the plaintiff's rejection. 67 L. Ed. 2d 202, 216.

The ultimate burden of persuading the trier of fact remains at all times with the complainant. If the employer meets the burden of production as set forth above, the complainant must either persuade the trier of fact that a discriminatory reason more likely

motivated the employer or show that the employer's explanation is unworthy of credence. Burdine, supra at 207, 217.

B. PRIMA FACIE CASE OF REPRISAL

To establish a prima facie case of retaliation, it must be shown: (1) that the plaintiff is either engaged in opposition to Title VII discrimination or participated in a Title VII proceeding; (2) that the plaintiff received adverse treatment from the employer either contemporaneous with or after the opposition or participation; and (3) that there is evidence of a casual connection between the basis and the issue, that is, that a retaliatory motive played a part in the adverse treatment, which among other matters, requires a showing that the employer had actual knowledge of the opposition or participation. Rogers v. McCall, 488 F.Supp. 689, 697-98 (D.D.C. 1980). See also, Brown v. Biglin, 45 F.Supp 394 (E.D. Pa. 1978). If the

complainant meets this burden, the agency must articulate a legitimate, non-discriminatory reason for the adverse treatment. The complainant then bears the final burden of proving that the reason is a pretext for discrimination.

V. EXAMINERS FINDINGS

A. Complainant's Prima Facie Case

There is no dispute that the complainant had been involved in EEO activity prior to the 1982 Supplemental letter. In fact, the complainant had prevailed at a prior EEO hearing.

The complainant must show that he received adverse treatment by the employer due to his protected EEO activity. This Examiner concludes that the complainant received no adverse treatment based upon the issuance of the 1982 Supplemental letter. The evidence established that the agency issued the

Supplemental letter because it believed that the original termination letter was inadequate because of a subsequent decision to reinstate and recredit the complainant pursuant to the aforementioned successful EEO complaint by the complainant. (See A.E. 11). Specifically, the complainant's probationary service was recomputed so technically, when he was terminated on October 17, 1980, he no longer was a probationary employee. The Supplement to the original letter, I.E. 4, was issued to give the complainant notice of his rights to file a grievance concerning his 1980 removal. Probationary employees do not have a right to file such a grievance.

The complainant alleged that he received adverse treatment because he was not given the opportunity to contest his termination before the Merit Systems Protection Board. (MSPB) This allegation was rebutted by the agency. Due to the fact that the complainant did not have one year of continuous service, he was

not entitled to an MSPB hearing. (See A.E. 1).

The complainant presented no credible evidence that he was adversely affected by the 1982 Supplement to the 1980 termination letter. This Examiner concludes, therefore, that the complainant has not established a prima facie case of reprisal.

VI. EXAMINER'S RECOMMENDED DECISION

This Examiner recommends a finding of no discrimination based upon reprisal.

VII. NOTICE OF APPEAL

Pursuant to 29 C.F.R. SS 1613.231 & 1613.233, the complainant may appeal to the Office of Review and Appeals at any time up to twenty (20) calendar days after receipt of the Agency's notice of final decision.

EDWARD B. REITKOPP
Attorney-Examiner

June 24, 1983
Date

JESUS ESTRADA-MELENDEZ
District Director

June 24, 1983
Date

APPENDIX E

MR. REITKOPP: Continue, Mr. Rost, but again, stick to the facts for now.

THE WITNESS: I--at this time, I think I would like to withdraw the part of my complaint that is against the handicap; because it is my contention--and maybe I put them both together too close, because they are close, but they should be separated, I guess, is the idea that all dealt with me in a friendly manner the first probationary period, until the time of firing, because of a handicap and then when I was brought back, all attitudes were changed. And this seems to be a little bit more of a reprisal because of that, and, then, again, because of this other letter to straighten this out because of a union contract, and they didn't--a further reprisal.

And this case is more dealing with the fact of reprisal, more than it is the fact of the handicap. The handicap decision has been

made. The reprisal is because of the handicap decision.

MR. REITKOPP: Okay, I understand.

Miss Chamberlain?

MS. CHAMBERLAIN: At this point in time, I don't have to address any questions toward the handicap?

MR. REITKOPP: Correct.

MS. CHAMBERLAIN: Thank you.

APPENDIX F

(Affidavit D)

Mr. Sherman B. Gonce, testified that he was the Station Manager at Paradise Valley during the complainant's probationary period, and the training policy was to assign a new employee to a T-6 for casing, office procedures, and street delivery. He states he could not recall who trained the complainant.

APPENDIX G

(Affidavit E)

NOTE: The EEO Investigator was present when two (2) T-6 carriers were questioned regarding providing the complainant with street and/or office training. One (1) carrier stated he assisted the complainant in casing a route, but never provided him with street training. The other T-6 stated he never provided any training for the complainant. The EEO Investigator was also present when management attempted to contact an employee who had transferred to another state. Investigation failed to disclose a T-6 or other carrier who trained the complainant on street or office duties.